

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA . 4:15-CR-0566-1
VERSUS . HOUSTON, TEXAS
LEE ROY VILLARREAL . NOVEMBER 25, 2019
. 10:15 A.M.

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE

APPEARANCES

FOR THE GOVERNMENT:

Casey MacDonald and Anibal Alaniz
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FOR THE DEFENDANT:

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Mayra Malone, CSR, RMR, CRR
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Proceedings recorded by mechanical stenography. Transcript
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PROCEEDINGS

THE COURT: Before we -- let me ask y'all: Are we ready to proceed with regard to the defendant's earlier motion regarding individuals, the 404(b) stuff?

MS. MACDONALD: The government is ready to proceed; however, we did go back to the grand jury and obtain a first superseding indictment, Your Honor, on November 21st, 2019. And given the new charges in that indictment, it is our position --

THE COURT: What are the new charges?

MS. MACDONALD: We expanded the conspiracy dates and we included the second object of the drug conspiracy, which is Count One, to include marijuana.

THE COURT: Okay.

MR. LOONEY: Your Honor, it's a massive change. We have not evaluated any of this discovery for marijuana because it wasn't charged.

MS. MACDONALD: I guess our view is the issue is now moot given the indictment now charges marijuana and all the transactions that were the subject of the 404(b).

MR. LOONEY: And we have not reviewed any of this in that light, and we are not in a position where we can take any position on their idea that it's moot. It may well be, but we just don't know.

THE COURT: Well, let me -- let's talk about maybe the

1 best way to move this case down the road, and obviously I have
2 read the motion for conflict counsel. Defendants haven't
3 responded to it yet in writing, but what is the -- I mean, what
4 is your position on that?

5 MR. LOONEY: My client got caught by surprise with
6 this, obviously. We have been on the case for a long time.
7 And I met with him twice over the last 24 hours, and he would
8 like to have a brief period of time to have an independent
9 attorney advise him on what our position should be.

10 THE COURT: Mr. Villarreal, where do you live?

11 THE DEFENDANT: In McAllen, Texas.

12 THE COURT: I didn't hear him.

13 THE DEFENDANT: In McAllen, Texas.

14 MR. LOONEY: McAllen.

15 THE COURT: I mean, it occurs to me that if we are
16 going to have conflict counsel visit with him, that I ought to
17 appoint somebody.

18 MR. LOONEY: Okay.

19 THE COURT: As opposed to just letting y'all choose
20 somebody because if you choose somebody that --

21 MR. LOONEY: I wasn't going to choose.

22 THE COURT: No. No. No. I understand that. Even if
23 Mr. Villarreal chooses somebody and then the government comes
24 back and says, oh, well, he is involved or she is involved in
25 this, I mean --

1 MR. LOONEY: Your Honor, I don't know how we avoid
2 that with anybody you might appoint either.

3 THE COURT: Yeah. I mean, I may know less than y'all,
4 quite frankly, about all the extensive facts, but I'm one of
5 the few people, I think, in Houston that knows a lot of the
6 attorneys in the Valley.

7 MR. LOONEY: I agree.

8 THE COURT: All right. Let's assume I appoint
9 somebody. Talk to me about scheduling. How would we do this?

10 MR. LOONEY: Well, obviously --

11 THE COURT: I mean, we are right in front of the
12 holidays.

13 MR. LOONEY: Yeah. Obviously, I would have to have an
14 opportunity to go through some type of debriefing with conflict
15 counsel, and I can do that nearly anytime except this week.
16 There are a whole bunch of documents -- I don't know what
17 conflict counsel might want to look at or not look at. I'm
18 sure I can do a thumbnail sketch in a few hours.

19 MS. MACDONALD: I would think that the Court could
20 provide conflict counsel with a copy of the sealed filing and
21 that would be sufficient for conflict counsel to adequately
22 advise the defendant.

23 MR. LOONEY: I think they need to know a lot of the
24 underlying facts.

25 THE COURT: Well, that may be true too, but I mean, I

1 may have to provide them the sealed motion, quite frankly, to
2 make sure they look at it and say, yes, I'm not involved in any
3 of this.

4 MR. LOONEY: Yeah. Before you make an appointment.

5 THE COURT: Now, have you guys signed on to represent
6 Mr. Guerra, the attorney, in the south Texas case?

7 MS. MACDONALD: It's Garcia, Your Honor.

8 THE COURT: Garcia. I'm sorry.

9 MR. LOONEY: My partner has officially signed on. I
10 have been advising him all along.

11 THE COURT: Okay. And that involved -- doesn't
12 involve the drug case? It involves bribery, right?

13 MR. LOONEY: That one is lawyer to lawyer, lawyer to
14 politician. Has nothing to do with drugs. It has to do with
15 the potential of construction contracts.

16 THE COURT: And I assume that's in McAllen?

17 MS. MACDONALD: Yes. It's pending before Judge
18 Alvarez. Your Honor, we were advised today by Mr. Looney that
19 Ms. Garcia Vela, Mr. Villarreal's third attorney, has also been
20 representing attorney Daniel Garcia in the McAllen matter as
21 well, so our motion will include all three attorneys now.

22 MR. LOONEY: To the extent, if there is a conflict for
23 us, she is as conflicted for exactly the same reasons.

24 THE COURT: Let me make sure on the record. Y'all
25 have seen their sealed filing?

10:21 1 MR. LOONEY: Yes, we have.

2 THE COURT: So anything I say here out of that filing
3 is not news to y'all? You have read it?

4 MR. LOONEY: That's right.

10:21 5 THE COURT: They are representing the attorney,
6 Garcia. Who is alleged to have gone with Mr. Villarreal to
7 Cancun?

8 MS. MACDONALD: Attorney Daniel Garcia and another
9 government witness.

10:21 10 THE COURT: I wanted to make sure I had the right
11 attorney. And the theory is -- this is a question, not a
12 statement, so I want y'all to correct me -- is that if the
13 prosecution proceeds against Mr. Villarreal, part of that
14 prosecution is that -- to prove his connection with the drugs
10:22 15 and the cartel and all of this other stuff, that after his
16 brother was killed, that the widow and Mr. Garcia and
17 Mr. Villarreal were at least, in theory, allegedly down in
18 Cancun looking for drugs and money to continue the business?

19 MS. MACDONALD: That's correct.

10:23 20 THE COURT: And I'm assuming the government at least
21 thinks they have some proof of that?

22 MS. MACDONALD: We have a government witness, Fabiola
23 Chapa, who will testify to that.

24 THE COURT: Which, in theory, would make Mr. Garcia
10:23 25 either a witness here or a nonwitness?

1 MR. LOONEY: Or perhaps an unindicted coconspirator.

2 THE COURT: That's what I was thinking or --

3 MR. LOONEY: And, by the way, Judge, this allegation
4 was brand new to us. We had no idea that there was any thought
5 that he had done any of this sort of thing.

6 THE COURT: But even if he's -- let's set aside the
7 fact that he might be an unindicted coconspirator. If he
8 testifies for the government, you guys clearly have a big
9 problem, but if he testifies for y'all, then you actually have
10 a pretty big appearance problem.

11 MS. MACDONALD: Another concern that the government
12 has is that each party, Mr. Villarreal and Attorney Danny
13 Garcia, know information about the other and could cooperate
14 against each other, setting aside the whole trial issue.

15 THE COURT: And they could what?

16 MS. MACDONALD: Cooperate against each other. And how
17 can counsel who represent both advise them in either way?

18 THE COURT: Testify against each other?

19 MS. MACDONALD: Right.

20 THE COURT: I understand that. I mean, that's an
21 immediate conflict.

22 MR. LOONEY: But that's also speculative.

23 THE COURT: I know, but even if you think of -- flip
24 it around. Even if they testify for each other, although I
25 don't know that Mr. Villarreal knows anything about the south

1 Texas stuff. But if he was to come up here and testify for
2 Mr. Villarreal, I mean, it's not like the government is not
3 going to point out that they are represented by the same
4 lawyers and at least hint that there was cooperation there.

5 Okay. Let's drop back off that subject for a
6 minute and let's go back to the new indictment.

7 I hear the defense saying, look, you have opened
8 a new can of worms here. I keep putting off the trial, and
9 every time I put it off, it gets more complicated. I think we
10 have reached the goal line and then somebody moves the goal
11 line.

12 MR. LOONEY: There is a solemn way to deal with the
13 new indictment. Quash it as an abuse of process because we
14 have gone so deep into this case, to receive it at the last
15 minute and restart all the discovery evaluation is abusive.

16 MS. MACDONALD: The charges do not involve any new
17 information or facts. All the reports that involve marijuana
18 have been tendered to counsel, which is how they were able to
19 file their motion to suppress and raise 404(b) issues. So
20 really just expanding the dates of the indictment and adding a
21 new object of the conspiracy --

22 MR. LOONEY: Your Honor, we never evaluated it for
23 defending marijuana. Never. We haven't looked at it for what
24 witnesses we need. We haven't looked at it for impeachment of
25 the witnesses that they would have.

1 The only reason we filed 404(b) was just to keep
2 the stink out of the cocaine case. But there's a major
3 evaluation for marijuana that is in front of the defense team
4 that didn't have to be.

5 MR. CONRAD: One more thing, Your Honor. Because some
6 of the dates have changed between the two indictments, it does
7 mean that we are going to have to file a motion to discover the
8 discrepancies between what the different grand juries heard,
9 because obviously they heard different testimony on dates. And
10 we're going to need to know what changed there.

11 THE COURT: Hold on just a second.

12 (Pause)

13 THE COURT: It seems to me that what we're going to
14 have to do is the Court needs to appoint conflict counsel, and
15 I'm soliciting -- by saying this, I'm soliciting y'all's input.
16 Conflict counsel needs to meet with both sides and then needs
17 to meet with Mr. Villarreal. And then either the defense
18 attorneys are going to have to withdraw or we need to have a
19 Garcia hearing.

20 MR. LOONEY: Unless I'm instructed by my client to
21 withdraw following the advice of conflict counsel, it will be a
22 hearing. It won't be a voluntary withdrawal.

23 THE COURT: No. I understand that. I mean, that's
24 what I was saying. I was giving you the chance that it could
25 fall either way.

1 Are you Ms. Garcia?

2 MS. GARCIA: Yes, Your Honor.

3 THE COURT: Come up here.

4 (*Compliance*)

5 THE COURT: You are always so quiet at these things.

6 MR. LOONEY: Your Honor, she is also Danny Garcia's
7 sister.

8 THE COURT: Okay. And that's what I wanted to -- I
9 wanted to get your involvement in this too because you've
10 obviously -- not obviously but both Mr. Conrad and Mr. Looney
11 have suggested that you're the one that has the wealth of
12 knowledge on this case.

13 All right. First of all, you are Mr. Garcia's
14 sister?

15 MS. GARCIA: Yes, Your Honor.

16 THE COURT: The attorney that's indicted down in the
17 case involving Weslaco and Mercedes?

18 MS. MACDONALD: Yes. Weslaco.

19 THE COURT: The one pending in Judge Alvarez's court?

20 MS. GARCIA: Yes, Your Honor.

21 MR. LOONEY: She has also advised him extensively on
22 that case.

23 THE COURT: Okay. That's my question. Is that
24 accurate?

25 MS. GARCIA: Yes, Your Honor.

1 THE COURT: All right. And then do you practice with
2 him?

3 MS. GARCIA: I have my own office. We office out of
4 the same building, but we have separate everything.

5 THE COURT: Do you office in McAllen or Rio Grande
6 City?

7 MS. GARCIA: Rio Grande City.

8 THE COURT: Okay.

9 MS. GARCIA: But I do live in Fort Bend County
10 currently.

11 THE COURT: You live in Fort Bend County but you
12 office in Rio Grande City?

13 MR. LOONEY: She is migratory, Your Honor. Her
14 husband is in law school here.

15 THE COURT: Believe me, I have made that drive a
16 million times, and the worst part about it is Fort Bend County,
17 dealing with all of that construction.

18 And I assume that you have been -- since day one,
19 have you been involved representing Mr. Villarreal?

20 MS. GARCIA: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. LOONEY: She is the one that got him out on bond
23 in California.

24 THE COURT: And -- because you guys came in the case
25 later, right?

10:31 1 MR. LOONEY: Yes. We came in the case --

2 THE COURT: But you have been here since the
3 beginning?

4 MS. GARCIA: Yes, Your Honor.

10:31 5 MR. LOONEY: We came in the case when other lawyers
6 got disqualified.

7 MR. ALANIZ: Your Honor, may I correct that?

8 Basically, what happened is Mr. Villarreal's first attorney
9 that made an appearance on his behalf was Mr. Daniel Garcia
10:31 10 initially. Then shortly thereafter, another lawyer came
11 onboard to represent him, and that's Juan Guerra.

12 THE COURT: Okay. That's where I was getting Guerrera
13 from.

14 MR. ALANIZ: So those two individuals, those lawyers,
10:31 15 were subsequently -- they withdrew because we filed motions to
16 disqualify.

17 THE COURT: I have read those motions.

18 MR. ALANIZ: After Mr. Garcia withdrew from his
19 representation, that's when Ms. Garcia filed a notice of
10:32 20 appearance. That's when she came onboard.

21 MS. MACDONALD: And Mr. Looney and Mr. Conrad were
22 already attorneys of record at that point.

23 MR. LOONEY: That's the only time she formally was in,
24 but she was there from the very beginning.

10:32 25 THE COURT: Okay.

1 MR. LOONEY: Not that it matters much. She's here.

2 THE COURT: All right. Here's what I'm thinking.

3 There's no way we are going to get to trial in February, not
4 with the holidays sitting right here and not with this issue,
5 because we are going to have to resolve this issue. And my
6 guess, given y'all's schedule and given whoever I appoint's
7 schedule and, you know, all the different pieces that are going
8 to have to come to fruition, we are probably not going to have
9 the Garcia hearing, assuming we have to have one, until
10 sometime in January, would be my guess.

11 So what I'm going to do is go back and look at my
12 schedule and search for a new trial date. So while you're
13 currently set for trial in February, I mean, I'm basically
14 telling you you are not going.

15 MR. LOONEY: Your Honor, while you are searching for a
16 date, we had our hands full getting ready for February before
17 marijuana was included. If you could graciously give us a
18 little extra time if we are still here. Obviously, if we are
19 not here, somebody is going to have to have a lot of time.

20 THE COURT: I know. And why I'm probably -- I'm
21 telling you you are not going in February. I probably won't
22 give you a new trial date until after we have a Garcia hearing
23 because it doesn't make any sense --

24 MS. MACDONALD: That makes sense.

25 THE COURT: -- making y'all jump through all these

1 hoops the next six weeks for that very reason, that if we have
2 new attorneys --

3 MR. LOONEY: Just so that we are all on the same page,
4 my understanding of the law -- and somebody correct me if I'm
5 wrong -- while this disqualification is pending, we need to
6 just stop until we find out if we are conflicted or not.
7 That's my understanding of the law.

8 THE COURT: Well, I don't know if you need to stop
9 necessarily. I mean --

10 MR. LOONEY: We don't need to be interviewing anybody.
11 We don't need to be --

12 THE COURT: It may be a waste of time. Because if you
13 are later disqualified --

14 MR. LOONEY: Then what I would like to announce to the
15 Court -- and let the Court instruct me to the contrary if the
16 Court wants to -- we are going to accumulate the information to
17 be helpful to conflict counsel. We're going to spend time with
18 conflict counsel. But everything else will stop until we know
19 if we are going to remain on the case or not.

20 THE COURT: I think that makes sense actually.

21 Any objection to that?

22 MS. MACDONALD: No. It makes sense, Your Honor.

23 THE COURT: I will send out a notice as to whom I'm
24 appointing. As to who? As to whom? I don't know which one.
25 And let y'all know.

10:35 1 My first instruction to whomever I appoint -- I
2 know whomever is right -- would be to have them contact this
3 set of lawyers and this set of lawyers and eventually,
4 Mr. Villarreal, he is going to want to visit with you, but he
10:35 5 or she, whoever I appoint, has got to figure out the lay of the
6 land before they ever get that far.

7 At some point in time he may want to visit with
8 all four of y'all together, but eventually he is going to want
9 to sit down with you by yourself and visit.

10:36 10 I'm assuming we all know the law on this, but,
11 you know, the defendant has a right to counsel of his choice,
12 and that's a pretty strong presumption that he gets, getting
13 counsel of his choice, unless there is a conflict.

14 And the Court usually -- I mean, I try to honor
10:36 15 that. I think in 15 years or 18 years, however many years it's
16 been, I have only disqualified two lawyers, and both of them
17 ended up being some kind of witness.

18 MR. LOONEY: Your Honor, as to the who and whom,
19 you're a federal judge, it's whatever you say it is.

10:36 20 THE COURT: I know, but I'm actually trying to -- you
21 know, in my mind, I'm thinking, well, some people are in the
22 Valley, some people are here, you know. And some people are
23 going to --

24 MR. LOONEY: Whether it is who or whom, any federal
10:37 25 judge can declare that for his courtroom.

1 THE COURT: I like to be accurate if I possibly can.

2 I will do that. It's doubtful if I get it done
3 between now and Thanksgiving, but I will try to get it done as
4 early in December as possible. Y'all can assume the February
5 trial date is off. And I would like to -- I mean, my goal is
6 to get this going fast enough that if we have to have a Garcia
7 hearing, we can hold it in early January so that -- let's
8 assume we still have the same team after this is all over, that
9 we can reset it and move forward.

10 MR. LOONEY: Very good.

11 MR. ALANIZ: Your Honor, just a quick question. Are
12 you considering somebody from Brownsville? Because if you are
13 considering somebody from McAllen, there are a number of
14 defendants who are also charged in the same case out in
15 McAllen, so the case --

16 THE COURT: I'm more likely to choose someone from
17 Brownsville, if I choose someone from the Valley.

18 MR. LOONEY: Your Honor, if I may make a suggestion?
19 I think it would be helpful if you chose somebody from Houston.

20 THE COURT: Well, I might do that because the three
21 defense lawyers are here, but eventually --

22 MR. LOONEY: And the prosecutors. And my client can
23 come up to meet with them.

24 THE COURT: Okay.

25 MR. LOONEY: I think we are going to have a less

10:38 1 sticky wicket if we get somebody from Houston.

2 THE COURT: Yeah. Okay. That's our game plan.
3 Consider the February trial setting off, and then we will --
4 once we get the lawyers straight, then we will start
10:38 5 reconsidering these motions.

6 MR. ALANIZ: Sure.

7 THE COURT: I would ask the defendants if they can
8 file -- obviously after you visit with your client, which I'm
9 sure you probably have already done, if you are going to file
10:39 10 something, go ahead and file a written response to the
11 government's motion to disqualify you.

12 MR. LOONEY: As soon as we get our client's
13 instruction on what he would like the response to be, we will
14 certainly do so.

10:39 15 THE COURT: Why don't y'all try to do that by -- let
16 me get a calendar.

17 MR. LOONEY: Your Honor, he would like to visit with
18 conflict counsel before giving us that instruction.

19 THE COURT: That makes sense as far as that goes.
10:39 20 Here's what I would like to do though first: If you will file
21 by, let's say, December 13th any response -- not setting out
22 Mr. Villarreal's position but any response to the factual
23 assertions that the government made. So, in other words, if
24 you think what the government said is wrong factually, tell me
10:40 25 why you think it's wrong.

1 MR. LOONEY: Can I share with you what it is going to
2 come down to, Your Honor?

3 THE COURT: Okay.

4 MR. LOONEY: Five witnesses that say that's nonsense
5 and one witness that says that's what happened.

6 THE COURT: I mean, I didn't really mean on the
7 merits. I really meant --

8 MR. LOONEY: I know, but that's what it is going to
9 come down to.

10 THE COURT: I really meant vis-a-vis, you know, did
11 Mr. Garcia represent Mr. Villarreal at this point in time?

12 MR. LOONEY: That part I can tell you, we have no
13 objection to the rendition of that part.

14 THE COURT: Okay. I didn't mean about
15 Mr. Villarreal's alleged conduct. I meant about the lawyer
16 scenario and who they are representing and who they are not
17 representing.

18 MR. LOONEY: But a stray last-minute witness has come
19 up with an allegation that is strongly disputed by all of the
20 other evidence and --

21 THE COURT: If you are satisfied with saying their
22 factual allegations are true with regard to who is representing
23 who and attorneys and that part of it, then you don't have to
24 do that. You just said it on the record.

25 MR. LOONEY: Okay.

1 THE COURT: Right now the ball is in my court. I will
2 appoint conflict counsel and have him visit with both sides and
3 then with Mr. Villarreal. And we are probably looking -- I
4 will have to wait to hear from him or her until they are ready,
5 and then we will move forward. And I will set a date for the
6 Garcia hearing. And then assuming at the Garcia hearing that
7 I'm okay with where the team is on both sides, then I will set
8 a schedule.

9 MR. LOONEY: Okay.

10 MS. MACDONALD: Okay.

11 THE COURT: All right. Anything else we can get done
12 today? I don't think so.

13 MR. CONRAD: I don't think we can do anything at this
14 point.

15 MR. LOONEY: And we have already announced that we
16 stopped.

17 THE COURT: All right. Thank you all for being here.

18 MR. CONRAD: Thank you, Judge.

19 MS. MACDONALD: Thank you, Your Honor.

20 *(Court adjourned at 10:41 a.m.)*
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I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled cause.

Date: May 28, 2021

/s/ Mayra Malone

Mayra Malone, CSR, RMR, CRR
Official Court Reporter